Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States	IB Docket No. 96-111
and	
Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations	CC Docket No. 93-23 RM-7931
and	
COMMUNICATIONS SATELLITE CORPORATION Request for Waiver of Section 25.131(j)(1) of the Commission's Rules As It Applies to Services Provided via the Intelsat K Satellite	File No. ISP-92-007

COMMENTS OF
HUGHES ELECTRONICS CORPORATION

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These comments are submitted on behalf of Hughes Electronics Corporation ("HE") and the following HE subsidiaries and affiliates: DIRECTV, Inc. ("DIRECTV"), DIRECTV, International ("DTVI"), Galaxy Latin America, L.L.P. ("GLA"), Hughes Communications, Inc. ("HCI"), Hughes Space and Communications ("HSC"), and Hughes Telecommunications and Space ("HTS"). (In these Comments, the name "Hughes" refers

collectively to HE and the subsidiaries listed above,[1] except where the context indicates otherwise.) These comments are filed in response to the Commission's Further Notice of Proposed Rulemaking (the "Further Notice") in the above-captioned proceeding. In the Further Notice, the Commission proposed a framework for evaluating the entry of non-U.S.-licensed satellites into the United States in light of the U.S. commitment under the World Trade Organization Agreement on Basic Telecommunications Services ("WTO Agreement").[2] As set forth below, Hughes supports the Commission's general proposal to streamline the application review process by not applying an ECO-Sat analysis in evaluating requests made by satellites licensed by WTO member countries to provide satellite services covered by the U.S. schedule of commitments under the WTO Agreement. Hughes also generally supports the Commission's proposal to apply a modified ECO-Sat test for satellites licensed by non-WTO member countries and non-covered satellite services.[3] Additionally, Hughes urges the Commission to apply any ECO-Sat or other entry test in a manner that will increase (rather than undermine) competition in the provision of satellite services, facilitate the widest possible range of satellite service options from U.S. and foreign-licensed systems, and encourage WTO and non-WTO member countries alike to pursue procompetitive satellite regulatory policies.

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1 Another subsidiary of HE, PanAmSat Corporation, is filing separate comments in this proceeding.

2 Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, Further Notice of Proposed Rulemaking, IB Docket No. 96-111, FCC 97-252, at ¶ 1 (rel. July 18, 1997) ("Further Notice").

3 See Further Notice at ¶ 20-24.

I. INTRODUCTION AND SUMMARY.

Hughes has long supported Commission proposals to afford satellite operators flexibility in serving their customers' satellite communication needs and to allow satellite users access to the widest possible range of competitive satellite service options. Two years ago, HCI and DIRECTV filed comments supporting the Commission's proposal to treat all U.S.-licensed satellites under a unified regime in which they can provide a full range of domestic and international services anywhere within their coverage areas without being required to obtain additional satellite authorization from the Commission.[4] Last year, Hughes filed comments in this proceeding supporting the Commission's general proposal to adopt an ECO-Sat test,[5] but urged the Commission not to replace its procompetitive "open skies" policy with a strict reciprocity test.[6]

Hughes' traditional support for an open and flexible satellite regulatory policy arises out of the various satellite services that Hughes seeks to offer to both domestic and foreign

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[4] See Amendment of the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, Report and Order 11 FCC Rcd 2429 (1996) ("DISCO I"). HCI filed comments in the DISCO I proceeding under the name Hughes Communications Galaxy, Inc.

[5] See Amendment of the Commission's Regulatory Polices to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, IB Docket No. 96-111, Consolidated Comments of DIRECTV, Inc., DIRECTV International, Inc. and Hughes Communications Galaxy, Inc. (filed July 15, 1996) ("DISCO II Consolidated Comments"); See also id., Consolidated Reply Comments of DIRECTV, Inc., DIRECTV International, Inc. and Hughes Communications Galaxy, Inc. (filed Aug. 16, 1996) ("DISCO II Reply Comments").

[6] In these Comments, Hughes refers to "reciprocity" as meaning the concept that, where a foreign country's market is not equally as open as the U.S. home market, the U.S. is justified in taking unilateral action to close its market to the foreign country's satellites or to apply trade sanctions against that country.

consumers. Hughes has a vital interest in ensuring that the Commission continue to follow a procompetitive satellite regulatory policy, that the United States adhere to its WTO commitments, and U.S. markets remain open to foreign-licensed satellites absent protectionist conduct by foreign administrations. For example, Hughes' interests include the following:

- DIRECTV began operating its first high-power DBS service in the United States in 1994 and presently provides approximately 175 video and audio channels to more than 2.7 million subscribers worldwide using three DBS satellites. Although DIRECTV also has the capability of serving substantial portions of Canada, DIRECTV's efforts to enter the Canadian market have been repeatedly frustrated by a series of Canadian protectionist barriers and regulatory hurdles.
- GLA, together with its partners, began providing direct-to-home ("DTH") satellite services throughout much of Latin America in 1996 over the U.S.-licensed Galaxy III(R) satellite. In several countries, GLA has faced obstacles to obtaining local authorizations; and in Argentina, GLA today is barred from providing service as a result in part of that country's stated view that the proposed DISCO II policy constituted a reciprocity policy barring Argentinean satellites from serving the United States. DIRECTV Japan, in which DTVI has an interest, similarly seeks to provide DTH service in Japan and must obtain regulatory authorization under Japanese law before commencing service there.
- HCI's proposed Spaceway system is a global satellite system that will provide interactive, broadband communications services at affordable rates to ultra small satellite terminals around the world. Among other services, the system will provide high speed, high capacity data distribution; high speed access to the Internet; and many other business services including telephony and video distribution. Galaxy Spaceway will need to obtain authorizations from each country it plans to serve before commencing service there. HCI's planned Expressway system will provide high-capacity, wideband satellite communications on a global basis, interconnecting ten satellites around the world to offer a total capacity of 588,000 T1 circuits. Like Spaceway, Expressway will need to obtain authorizations from each country it plans to serve before commencing service there.
- HTS is a strategic partner and major investor in ICO Global Communications Corporation ("ICO"), a United Kingdom-licensed private satellite operator organized in 1995 to develop, launch and operate a global MSS system. HSC is ICO's main supplier and has entered into a $25 billion contract with ICO for satellites and associated equipment. ICO seeks to promote competition among global MSS operators around the world and to establish a regulatory framework that allows non-U.S.-licensed MSS operators to compete in the

United States under fair terms.

These and other Hughes interests[7] have provided Hughes with first-hand knowledge of the benefits of competition in the provision of satellite services to both providers of satellite services and to consumers of such services. Based on this experience, Hughes supports the Commission's proposal not to apply an ECO-Sat test in evaluating whether to permit entry of satellites licensed by WTO members to provide covered services. Hughes also generally supports the Commission's proposal to apply an ECO-Sat test with respect to non-WTO member countries and non-covered services, such as DTH (including true DBS) services. Regardless of the country or the service involved, however, Hughes urges the Commission to exercise caution in establishing any foreign satellite entry test, particularly in light of U.S. WTO commitments and the U.S. role as a world leader in promoting competitive telecommunications markets. Reciprocity tests, such as the ECO-Sat test as it was originally proposed, hold the potential to result in a tit-for-tat policy that may harm primarily U.S. carriers who seek to provide service in foreign markets. Similarly, in refining the procedures applicable to foreign-licensed satellites seeking to serve the United States, the Commission should ensure that such procedures are WTO-consistent and do not, by imposing overly burdensome requirements, provide a justification to foreign licensing administrations to impose equally burdensome requirements on U.S.-licensed satellites.

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[7] For example, Hughes Network Systems, Inc. is a significant manufacturer of equipment used in connection with the provision of satellite services.

II. THE COMMISSION CANNOT APPLY AN ECO-SAT OR OTHER ENTRY TEST TO SATELLITES LICENSED BY WTO MEMBER COUNTRIES OFFERING COVERED SERVICES.

In the Further Notice, the Commission proposed to streamline its review process for satellites licensed by WTO member countries to provide covered services by not applying any ECO-Sat test in reviewing requests by such satellites to offer service to U.S. consumers.[8] Hughes supports the Commission's proposal to streamline its review process. A streamlined review process that does not apply an ECO-Sat test fulfills U.S. commitments under the WTO Agreement and is consistent with the Commission's long-standing policy of promoting competition in satellite services and the free flow of ideas and information across national borders. As the Commission repeatedly has noted in the satellite context, "[t]he foundation of the U.S. international satellite policy is the establishment of a global competitive communications environment that provides customers with increased satellite service options, improved quality, and lower rates."[9] The groundbreaking WTO Agreement helps establish that global competitive communications environment. The Commission itself has noted that the WTO Agreement "will have an unprecedented impact worldwide in opening up basic telecommunications markets to competition."[10] For the first time in history, the United States and 48 other countries have committed to opening up their markets by January 1, 1998 or over

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[8] Further Notice at ¶ 18.

[9] Vision Accomplished Inc., 11 FCC Rcd 3716, 3718 (1995); accord IDB WorldComm Services, Inc., 10 FCC Rcd 7278, 7279 (1995); Amendment of the Commission's Regulatory Polices to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, Notice of Proposed Rulemaking, IB Docket No. 96-111, at ¶ 8 (rel. May 14, 1996) ("DISCO II NPRM").

[10] Further Notice at ¶ 13.

the next few years thereafter.[11] The effect of these commitments in the WTO Agreement will be to fulfill the long-standing Commission goal of providing "U.S. satellite providers with access to foreign markets and the satellite systems of foreign markets access to the U.S. market."[12]

Along with requiring that a member country provide access to foreign-licensed satellites consistent with its commitment, the WTO Agreement obligates treatment of such satellites on a non-discriminatory basis. Unless a WTO member country takes an exemption, it has a general obligation under the WTO Agreement to afford other WTO member satellites national treatment and most-favored-nation status.[13] National treatment requires a WTO member country to treat foreign-licensed satellites no less favorably than it treats its domestic satellites. The most-favored-nation obligation requires each WTO member country to treat all other WTO member countries no less favorably than any one WTO member country.[14] Thus, the WTO Agreement prohibits discriminatory treatment of foreign-licensed satellites in the U.S. and of U.S.-licensed satellites in other WTO member countries.

Use of any ECO-Sat or other test to evaluate entry into the U.S. market of satellites licensed by WTO member countries providing covered services clearly would violate both the national treatment and most-favored-nation obligations of the WTO Agreement. Because the Commission logically cannot apply an ECO-Sat test to U.S.-licensed satellites

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[11] Id. at ¶ 10.

[12] Vision Accomplished at 3718, ¶ 5.

[13] The national treatment and most-favored-nation obligations are contained in the General Agreement on Trade in Services, signed April 15, 1994 ("GATS"), under which the WTO Agreement was negotiated. See Further Notice at ¶ 2.

[14] Id. at ¶ 8.

seeking to provide service to U.S. consumers, application of an ECO-Sat test to satellites licensed by WTO member countries seeking to provide the same service to U.S. consumers would result in the Commission imposing less favorable treatment on such foreign-licensed satellites than on U.S.-licensed satellites. Similarly, examining the competitive opportunities available to U.S.-licensed satellites on a country-by-country basis, as the proposed ECO-Sat test would require, could result in differential treatment among WTO member countries, which would violate the most-favored-nation obligation under the WTO Agreement. Thus, the Commission should adopt its proposal not to apply any ECO-Sat or other entry test to satellites licensed by WTO member countries providing covered services as the only alternative consistent with U.S. obligations under the WTO Agreement.

Moreover, the Commission's proposal not to apply an ECO-Sat analysis where the provision of satellite services is covered by the WTO Agreement demonstrates the appropriate level of deference due the Executive Branch regarding the scope of U.S. commitments under the WTO Agreement. The Executive Branch was well aware that the commitments of each WTO member would vary, but concluded that U.S. satellite service providers would derive significant overall benefits from the WTO Agreement and that the U.S. policy should be to promote competition from foreign-licensed satellites in all services except for DTH (including true DBS) and DARS. The Commission's proposal respects this careful determination by the Executive Branch and, thus, should be adopted.

The Commission has suggested that it might apply an ECO-Sat test to route markets served by foreign-licensed satellites "to promote effective competition through broader

market access."[15] As the Commission recognizes, however, the national treatment obligation under the WTO Agreement prohibits the application of an ECO-Sat test to route markets because, under DISCO I, the Commission specifically permitted U.S.-licensed satellites to provide service between the U.S. and any foreign country without further Commission authorization, as long as the U.S.-licensed satellite obtained the necessary authorization from the foreign administration.[16] Rather than reverse the competitive gains realized under DISCO I, Hughes supports the Commission's alternative position to address concerns about noncompetitive conditions on route markets by prohibiting foreign-licensed satellites providing service between the U.S. and route markets from entering into exclusionary agreements with route market countries or dominant earth station operators within those countries.[17] Under current Commission rules, U.S.-licensed satellites already are prohibited from entering into such exclusionary agreements. Imposing the same restriction on satellites licensed by WTO-member countries would not violate the WTO Agreement because it would treat such satellites no less favorably than U.S.-licensed satellites. By prohibiting exclusionary agreements, the Commission can maintain the procompetitive policies outlined in DISCO I, remain consistent with U.S. obligations under the WTO Agreement, and continue to encourage foreign administrations to open up their markets to competition in the provision of satellite services.[18]

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[15] Id. at ¶ 25.

[16] DISCO I at 2434, ¶¶ 33-34; see Further Notice at ¶ 26.

[17] Further Notice at ¶ 27.

[18] The prohibition on exclusionary agreements should apply to all foreign-licensed satellites, regardless of the WTO membership of the licensing administration, and to both covered and non-covered satellite services, including both fixed satellite service ("FSS") and mobile satellite service ("MSS"). See id. at ¶ 42. The Commission, however, should not extend the prohibition on exclusionary agreements to a non-route country, *i.e.*, a country to which the

In addition to not applying an ECO-Sat test to route markets, the Commission should clarify in the order adopted in this proceeding that streamlined review without the application of an ECO-Sat test also will apply to mobile satellite service ("MSS") providers licensed by WTO member countries, such as ICO. The United States included MSS in its WTO commitment and, thus, has agreed to open up the U.S. market to MSS services as of January 1, 1998. Consequently, the Commission should specify that ICO, an MSS provider licensed by the United Kingdom, can provide MSS services to U.S. consumers without having to satisfy an ECO-Sat or other entry test. ICO is a private MSS provider licensed by a WTO-member country and, as such, should have the same right under the U.S. commitment to the WTO Agreement to compete in the provision of satellite services as any other private satellite system licensed by the United Kingdom. Moreover, the provision of MSS services by ICO is exactly the type of competition that the Commission consistently has promoted and that the WTO Agreement was intended to foster. Thus, Hughes requests that the Commission state in its order that imposition of an entry test on ICO is both inconsistent with WTO principles and unwarranted.

While the WTO Agreement prevents the Commission from imposing an ECO-Sat or other entry test on satellites licensed by WTO member countries offering covered services, the Commission may still consider nondiscriminatory public interest considerations in evaluating a particular request to provide service to U.S. consumers. The Commission has suggested several such public interest considerations, including spectrum coordination and national security,

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foreign-licensed satellite provides service that does not involve service between the United States and the country. See id. at ¶ 43. Entry into the United States of a foreign-licensed satellite with an exclusionary agreement with a non-route country generally will not place U.S.-licensed satellites at a competitive disadvantage vis-à-vis the foreign licensed satellite. Therefore, the Commission should not deny entry into the U.S. market to a potential competitor based on the existence of a non-route exclusionary agreement.

foreign policy, and international trade issues.[19] Hughes supports the Commission's proposal to consider public interest factors in evaluating an individual request for authorization, but cautions the Commission to tread lightly to ensure that it fulfills both the letter and the spirit of the WTO Agreement. The Commission should never deny or condition authorization to a satellite licensed by a WTO member country offering covered services, except in the rare case where a high risk to competition is demonstrated.[20] The Commission, of course, should and must continue to act to prevent harmful interference among satellite operators and between satellite operators and terrestrial users. Moreover, the Commission may consider national security, foreign policy, and international trade issues, but only if these issues are raised by the Executive Branch. In short, the Commission should apply its public interest considerations in a manner that promotes rather than discourages competition in the provision of satellite services.

III. THE COMMISSION SHOULD APPLY ITS PROPOSED ECO-SAT TEST FLEXIBLY IN REVIEWING REQUESTS FOR ACCESS BY SATELLITES LICENSED BY NON-WTO MEMBER COUNTRIES OR OFFERING SERVICES NOT COVERED BY THE WTO AGREEMENT.

While the WTO Agreement prevents the Commission from applying an entry test to satellites licensed by WTO member countries providing covered services, the Commission still can apply a modified ECO-Sat test to satellites that are licensed by non-WTO member countries and to services that are not covered by the WTO Agreement. Where the WTO Agreement does not govern, foreign countries have not made a commitment to open their satellite markets to competition from U.S.-licensed satellites and to abide by national treatment and most-favored-nation obligations. The Commission, therefore, has no assurance that U.S.-

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[19] Id. at ¶¶ 37-38.

[20] See id. at ¶ 18.

licensed satellite service providers will have the ability to compete in non-WTO-member markets on an open and nondiscriminatory basis. In such cases, the Commission should adopt an ECO-Sat analysis for evaluating the entry of foreign-licensed satellites into the U.S. market.

In its previous comments in this proceeding, Hughes generally supported the Commission's proposed ECO-Sat test, with some modifications to ensure that the test did not involve a strict reciprocity analysis.[21] While an ECO-Sat test can promote greater satellite competition in foreign markets if applied properly, a rigid reciprocity test can foreclose -- and already has foreclosed -- competitive entry by U.S.-licensed satellites seeking to serve foreign markets. Thus, Hughes urged the Commission to apply its ECO-Sat test in a manner consistent with the Commission's traditional "open skies" policy.[22] Consistent with this policy, Hughes proposed that the Commission generally allow entry of a foreign-licensed satellite into the United States to compete in the provision of satellite services absent a showing that the foreign administration that licensed the satellite imposes significant protectionist barriers that shield its satellite industry from competition.[23] By applying the ECO-Sat test in this flexible manner, the Commission can remain a model to foreign administrations of the benefits of implementing a procompetitive satellite regulatory policy and increasing the satellite options available to U.S. consumers.

In its previous comments, Hughes urged the Commission to modify the proposed

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[21] DISCO II Consolidated Comments at 10-11.

[22] Id. at 5; DISCO II Reply Comments at 8.

[23] DISCO II Consolidated Comments at 17. The ECO-Sat would also examine the route markets of foreign-licensed satellites if they were different that the country in which the satellite was licensed. Id. at 12; See also DISCO II NPRM at ¶ 27.

ECO-Sat test to reflect this more flexible application. Under this modified ECO-Sat test, an earth station applicant seeking access to a non-U.S.-licensed satellite would have the initial burden of demonstrating that the foreign satellite's home and route markets do not impose *de jure* barriers to U.S.-licensed satellites seeking to compete in the provision of the same satellite services.[24] An applicant could make such a *de jure* showing, for example, by demonstrating that the country appears on a list compiled by the International Bureau of foreign markets that permit competitive entry of U.S.-licensed satellites.[25] If no *de jure* barriers existed, then the burden would shift to parties opposing entry of the foreign-licensed satellite to demonstrate that *de facto* barriers existed on the satellite's home or route markets. While the existence of *de facto* barriers cannot be condensed into a finite list, the Commission has suggested some factors to consider, such as the transparency of the regulator, the separation between the regulator and the foreign-licensed satellite system, the existence of safeguards to reduce the competitive advantages enjoyed by a government-subsidized system, and the ability to use earth stations associated with the foreign-based system.[26] After examining whether *de jure* or *de factor* barriers existed in the foreign market, the Commission would consider, as part of its public interest analysis, communications and competition-related issues, as well as national security, foreign policy and trade issues raised by the Executive Branch. Applied flexibly this modified ECO-Sat test should result in denial or conditioning of entry only in rare cases of egregious protectionist conduct.

Hughes continues to support the application of the modified ECO-Sat test to

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[24] DISCO II Consolidated Comments at 16; DISCO II Reply Comments at 15.

[25] DISCO II Consolidated Comments at 16; DISCO II Reply Comments at 17.

[26] DISCO II NPRM at 41.

satellites licensed by non-WTO member countries and to all foreign-licensed satellites offering non-covered services. In these cases, application of a flexible ECO-Sat test promotes the goal of encouraging the development of competition in foreign satellite markets. While the modified ECO-Sat test conditions entry of foreign-licensed satellites into the United States on the elimination of *de jure* and *de facto* barriers to U.S.-licensed satellites, the test should be flexible enough to allow for differences in the regulatory policies adopted by foreign countries.[27] Moreover, by applying the ECO-Sat test on a service-by-service basis, the Commission affords foreign administrations flexibility to open up their countries to competition one market or sub-market at a time. Thus, a flexible ECO-Sat test should help to increase the pace at which competition develops in foreign markets.

In contrast, a strict reciprocity approach may undermine the Commission's goal of increasing global competition in the provision of satellite services. Foreign administrations may view a reciprocity test as an attempt by the United States to set international satellite policy on a unilateral basis. These administrations may respond by imposing burdensome obligations on U.S.-licensed satellite providers, if not retaliating by barring them altogether from their markets.[28] In fact, the mere proposal of the ECO-Sat test already may have led Argentina to raise high barriers to entry. Argentina's Resolution 14 effectively has closed Argentina's markets to many U.S.-licensed satellite providers -- particularly DBS and DTH providers -- on

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[27] The Commission has stated that it does not expect a foreign countries' satellite regulation to mirror the Commission's rules and policies. Vision Accomplished at 3718, ¶ 6.

[28] Many smaller countries have not had a reason to a adopt any satellite regulatory policy. If these countries view the Commission's entry test as a reciprocity test, then they may impose stringent barriers to U.S.-licensed satellites in retaliation, harming U.S.-licensed satellites' ability to provide satellite services on a global basis.

the specific ground that the Commission's proposed ECO-Sat test, by acting as a reciprocity test, closed the United States to competition from Argentinean satellites. Whether the Argentine view is correct or not, it is clear that this result is exactly the opposite of what the Commission hopes to achieve in promoting the development of open markets through application of an ECO-Sat test.

In addition, implementation of a rigid reciprocity test may raise difficult jurisdictional issues regarding the scope of the Commission's powers and the Executive Branch's prerogative to set international trade policy. Application of a reciprocity-based ECO-Sat test by the Commission could adversely affect U.S. positions and discussions on delicate trade issues. Moreover, a strict reciprocity test may weaken the ability of the Executive Branch to encourage foreign countries to open up their markets to U.S.-licensed satellite systems if such countries view the reciprocity test as closing the U.S. market to their satellites. Thus, the Commission should reject a strict reciprocity test to avoid impeding the ability of the Executive Branch to implement U.S. trade policy.

Similarly, where the United States has completed negotiations on a bilateral agreement regarding the provision of satellite services, the Commission should abide by the provisions of that agreement. Hughes supports the Commission's proposal not to apply any ECO-Sat or other entry test to foreign-licensed satellites offering services covered by a bilateral agreement.[29] Such bilateral agreements constitute binding commitments of the United States and, under the Supremacy Clause of the U.S. Constitution, supersede Commission rules and

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[29] Further Notice at ¶¶ 29-30.

policies with respect to the entry of foreign-licensed satellites into the United States.[30] Moreover, bilateral agreements represent a delicate weighing of trade and foreign policy concerns by the Executive Branch and should be afforded deference. And as the U.S.-Mexico Agreement reflects, such bilateral agreements often have procompetitive purposes and achieve procompetitive results.[31] As a result of the U.S.-Mexico Agreement, GLA and its members are now providing DTH service in Mexico in competition with other video service providers there, and Mexican satellites are able to offer service in the United States.[32]

In the end, the ECO-Sat test should bar entry only where a foreign country imposes significant protectionist barriers against U.S.-licensed satellites. For example, Canada continues to impose barriers that effectively prevent U.S.-licensed DBS and DTH service providers from competing in the Canadian market. There, foreign regulators have discriminated against potential U.S. competitors by imposing severe limits on programming of foreign origin and restricting the facilities over which programming may be transmitted. As a result, providers such as DIRECTV's Canadian affiliate have been effectively barred from the Canadian market. In such cases, there can be no serious dispute that a foreign administration is enforcing a policy specifically designed to protect its home market at the expense of competition. Where such

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30 U.S. Const. art. VI, cl. 2.

31 See Agreement between the Government of the United States of America and the Government of the United Mexican States Concerning the Transmission and Reception of Signals from Satellites for the Provision of Services to Users in the United States of America and the United Mexican States, April 26, 1996; Protocol Concerning the Transmission and Reception of Signals from Satellites for the Provision of Direct-to-Home Satellite Services in the United States of American and the United Mexican States, November 8, 1996.

32 See Televisa International, L.L.C., Order and Authorization, File No. 330-DSE-L-97, DA-1758 (rel. Aug. 18, 1997).

protectionist policies are in place, the ECO-Sat test can serve an important purpose in preventing satellites licensed by protectionist administrations from enjoying the benefits of a competitive U.S. satellite market.

IV. THE COMMISSION SHOULD ENSURE THAT AUTHORIZATION PROCEDURES ARE NOT UNDULY BURDENSOME.

Hughes supports, with some modifications, the Commission's proposals relating to the procedures by which it would authorize non-U.S.-licensed satellites to serve the United States. In general, the Commission's proposals provide non-U.S.-licensed satellites flexibility in determining whether to engage in a Commission processing round or to seek authorization outside of a processing round. Hughes, however, urges the Commission to modify its proposed procedures to ensure that they do not become, in effect, a relicensing procedure. Applying all of the Commission's rules relating to U.S.-licensed space stations to non-U.S.-licensed satellites would be unnecessarily burdensome and could invite other administrations to impose equally burdensome requirements on U.S.-licensed satellites.

A. THE COMMISSION SHOULD ADOPT ITS GENERAL PROPOSALS RELATING TO LICENSING PROCEDURES FOR NON-U.S.-LICENSED SATELLITES.

In the Further Notice, the Commission proposed two methods by which non-U.S.-licensed satellites can obtain Commission authorization to provide services within the United States. The first proposed method contemplates participation by the non-U.S.-licensed satellite in a Commission processing round.[33] Under this method, a satellite operator that is licensed by a foreign administration or that is pursuing such a license could submit, as part of a processing

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[33] Further Notice at ¶ 48.

round, an earth station application to access a non-U.S.-licensed satellite.[34] The earth station application would contain all of the information that must be submitted by space station applicants under Part 25 (Satellite Communications) or Part 100 (Direct Broadcast Satellite Service) of the Commission's rules.[35] Alternatively, a foreign satellite operator that does not wish to receive an earth station license could file in the processing round a "letter of intent" containing the same information as required by U.S. space station applicants.[36] The foreign satellite's earth station application or letter of intent would then be considered in the processing round on an equal basis with U.S. space stations.[37]

The Commission's second proposed method would require the submission of an earth station application outside of a processing round. Only operating satellites engaged in international coordination procedures would be able to use this method.[38] Although the notice is silent on the information that an earth station applicant must submit under this method, presumably, the Commission would require only submission of the same information as would be required in an earth station application to access a U.S.-licensed space station.

Hughes generally supports the Commission's proposed procedures for authorizing non-U.S.-licensed satellites to serve the United States. Commission procedures should not

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[34] Id. at ¶ 50.

[35] Id.

[36] The Commission has proposed to exempt both earth station applicants and non-U.S.-licensed satellites filing a letter of intent from financial information submission requirements if the satellite is in-orbit and operating and from technical information filing requirements if the international coordination process has been completed. Id. at ¶¶ 43 n.44, 60 n.50.

[37] Id. at ¶¶ 38, 53.

[38] Id. at 55.

unduly restrict the avenues by which a non-U.S.-licensed satellite can obtain Commission approval to compete in the provision of satellite services to U.S. consumers. By giving non-U.S.-licensed satellites alternative methods by which to obtain Commission authorization, the Commission provides such satellites with the flexibility they need to effectively offer satellite services to U.S. consumers on a competitive basis.

While Hughes generally supports the Commission's proposed authorization procedures, Hughes urges the Commission to lighten the information filing requirements that non-U.S.-licensed satellites must submit to participate in a Commission processing round.[39] Under the Commission's proposed rules, foreign-licensed satellites must submit the same financial, legal, and technical information required of U.S. space station applicants.[40] Although the Commission has proposed exceptions to the financial information filing requirement for in-orbit and operating satellites and to the technical information filing requirement for satellites that have completed the international coordination process,[41] the Commission's proposed information filing requirements remain unnecessarily burdensome on non-U.S.-licensed satellites seeking to provide services to U.S. consumers. In most cases, non-U.S.-licensed satellite operators participating in processing rounds already will have received space station licenses from a foreign administration. By imposing onerous information filing requirements, the Commission will be, in effect, subjecting non-U.S.-licensed satellites to relicensing in a second country, under

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[39] Hughes assumes that the Commission is not proposing to require earth station applications submitted outside of a processing round to contain more extensive information than required for earth station applications seeking to access U.S.-licensed satellites. To the extent that the Commission is proposing a more extensive filing requirement, Hughes opposes that proposal.

[40] Id. at ¶ 60.

[41] Id. at ¶¶ 43 n.44, 60 n.50.

potentially conflicting standards.

Moreover, except for technical information necessary to prevent harmful interference, the Commission has no legitimate interest that will be advanced through extensive information filing requirements. Applying less stringent information filing requirements on foreign-licensed satellites does not "constitute treatment more favorable for non-U.S. systems than for applicants seeking U.S. space station licenses."[42] On the contrary, requiring full compliance with all of the Commission's information filing requirements could redound to the detriment of U.S. operators that seek to serve multiple foreign markets. If foreign regulators in each market that U.S.-licensed satellites wished to serve were to impose their own technical, legal, and financial requirements on non-domestic satellites, U.S.-licensed satellites would be subject to burdensome and possibly conflicting relicensing procedures that have nothing at all to do with their service to a particular country. It, therefore, is essential that the Commission respect foreign administrations' licensing procedures.[43] Failure to do so may well lead other administrations to impose retaliatory space station relicensing or other burdensome requirements on U.S.-licensed satellite operators seeking to provide service abroad. Such a result clearly would be detrimental to competition, in both the U.S. and in foreign countries.

For the same reason, Hughes urges the Commission not to impose all of its technical and service rules on non-U.S.-licensed satellites except for rules designed to prevent

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[42] Id. at ¶ 60.

[43] To be sure, in cases of egregious protectionist conduct by a foreign administration, or where a satellite operator chooses to obtain a license from an administration of convenience that has minimal or no licensing requirements, it may be appropriate to consider all of the foreign regulators' licensing requirements as a possible de facto barrier to entry, but in the ordinary case there simply is nothing to be gained from doing so.

harmful interference.[44] The Commission's interest is not in requiring foreign operators, even those that seek to serve the U.S., to build satellites precisely to every Commission standard, regardless of the purpose served by the particular standard. Rather, the U.S. interest is in ensuring that foreign-licensed satellites do not cause harmful interference. The Commission's proposal to require full compliance with all Part 25 and Part 100 technical requirements, such as requiring "Big LEO" systems to provide coverage to the entire United States at one time,[45] may not serve those interests and accordingly impose unnecessary burdens on earth station applicants, which must submit the required material, and the Commission, which must review it. Thus, the Commission should limit the application of its technical and service rules to those rules that are designed to prevent interference against U.S.-licensed satellites.

B. THE COMMISSION SHOULD CONTINUE TO LICENSE EARTH STATIONS OPERATING WITH NON-U.S.-LICENSED SATELLITES SO THAT IT WILL HAVE THE REGULATORY AUTHORITY TO PREVENT INTERFERENCE.

In the Further Notice, the Commission proposed to continue to require licensing of receive-only earth station operating with non-U.S.-licensed satellites while eliminating such licensing requirements for receive-only earth stations operating with U.S.-licensed satellites.[46] As in its previous comments, Hughes supports this proposal because it presents the only mechanism by which the Commission can prevent harmful interference caused by non-U.S.-licensed satellites.[47]

The Commission has the responsibility under the Communications Act for

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[44] See id. ¶¶ 39-44, 53.

[45] See id. at ¶ 40.

[46] See id. at ¶ 57.

[47] See DISCO II Consolidated Comments at 22; DISCO II Reply Comments at 22.

implementing effective and efficient spectrum management policies, which include ensuring that satellite operators will be able to use the spectrum licensed to them without harmful interference from other spectrum users.[48] As Hughes previously noted, the Commission can use its licensing authority to prevent interference caused by U.S.-licensed space stations, but it has no recourse against a non-U.S.-licensed satellite absent licensing of the earth station used to access that satellite.[49] Thus, Hughes continues to support the Commission proposal to continue to require licensing of receive-only earth stations operating with non-U.S. satellite systems as the only viable means for the Commission to prevent interference to U.S.-licensed systems.

Although the Commission's proposal calls for licensing only those earth stations operating with non-U.S.-licensed satellites, it does not violate the national treatment obligations of the WTO Agreement. First of all, as the Commission notes, virtually all receive-only earth stations operate within the DTH (including true DBS) service and the digital audio radio service ("DARS").[50] DTH, DBS, and DARS are not covered by the U.S. commitment under the WTO Agreement and, thus, are not subject to national treatment obligations. Moreover, even for receive-only antennas operating within a covered service, national treatment obligations only require that the Commission not treat satellites licensed by WTO member countries any "less favorably" than U.S.-licensed satellites. Because U.S.-licensed satellites must obtain Commission licenses for their space stations while non-U.S.-licensed satellites need not, requiring licensing of earth stations operating with non-U.S.-licensed space stations actually

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[48] See 47 U.S.C. § 301-303.

[49] See DISCO II Consolidated Comments at 23; DISCO II Reply Comments at 23.

[50] Further Notice at ¶ 57.

results in lesser regulation of non-U.S.-licensed satellite systems.[51] Consequently, non-U.S.-licensed satellites are not treated any "less favorably" under the Commission's proposal.

The Commission's policy of licensing earth stations operating with non-U.S.-licensed satellites also should extend to Intelsat satellites, including Intelsat K.[52] As Hughes previously noted, the Commission has the same responsibility of ensuring non-interference from Intelsat satellites as it does with any other non-U.S.-licensed satellites.[53] Especially with respect to the Intelsat K satellite, the Commission should require that any new provision of service be subject to the licensing process, including an ECO-Sat analysis. In contrast to treaty-based telecommunications under the Intelsat and Inmarsat Agreements, the Intelsat K satellite provides new competitive DTH services. The Commission, therefore, should not apply any less regulation to Intelsat K services than it does to similar services offered by other non-U.S.-licensed satellites.

Finally, in maintaining its receive-only earth station licensing requirements, the Commission should provide for a grant of blanket authority to operate multiple technically identical receive-only earth stations in a particular service, regardless of the nationality of the satellite with which those earth stations will communicate.[54] Such blanket authority is particularly important for earth stations receiving DTH services and MSS handsets, since

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[51] If, however, the Commission adopts, in effect, a relicensing procedure by imposing its full information filing requirements on non-U.S.-licensed satellites participating in processing rounds, requiring earth station licensing as well may result in a violation of U.S. national treatment obligations.

[52] See id. at ¶ 58.

[53] See DISCO II Consolidated Comments at 24; DISCO II Reply Comments at 23.

[54] Further Notice at ¶ 58.